

RAMON HERNANDEZ.

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FEBRUARY 15, 1910.—Ordered to be printed.

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Mr. PRINCE, from the Committee on Claims, submitted the following

ADVERSE REPORT.

[To accompany H. R. 11129.]

The Committee on Claims, to whom was referred the bill (H. R. 11129) for the relief of Ramon Hernandez, authorizing the Court of Claims to hear and determine cause upon a motion to be filed for a new trial (Indian depredation No. 8734) within sixty days from the passage of this act, having considered the same, report thereon with a recommendation that it do not pass.

Appended hereto is a letter from the Department of the Interior, which is made a part of this report.

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DEPARTMENT OF JUSTICE,  
Washington, February 11, 1910.

SIR: I am in receipt, by reference, of a copy of H. R. 11129, entitled "A bill for the relief of Ramon Hernandez," authorizing the Court of Claims to hear and determine the case of Ramon Hernandez (Indian depredation No. 8734), with a request for the facts concerning the matter involved, and an opinion touching the merits of the case.

Ramon Hernandez in 1892 filed a petition in the Court of Claims under the Indian depredation act of March 3, 1891 (26 Stat. L., 851), alleging that in April, 1868, Indians belonging to the Mescalero Apache tribe took from his possession 15 head of mules valued at \$2,250. In 1898 testimony was taken for the claimant tending to establish the allegations of the petition. In 1899 the case was dismissed on the defendants' plea, on the ground that the claimant was not a citizen of the United States at the time of the depredation (34 Ct. Cls., 455). No motion for new trial was filed in the claimant's behalf, although a deposition of the claimant on the subject of his citizenship was taken, and placed in the files of the court after the petition had been dismissed. In this deposition the claimant testified to facts that, if true, would probably establish his citizenship; but such testimony was inconsistent with that given by him in his former deposition.

The Indian depredation act above referred to provides for recovery only in cases where the claimant was a citizen of the United States at the time of the depredation. This was but one of many claims that have been dismissed because the fact of citizenship was not established. This claimant had his day in court; the defendant's

plea was not filed until after he had closed his evidence and filed his brief asking for judgment; and after the dismissal of his petition he did not seek in the usual manner, by a motion for a new trial in the Court of Claims, to have the case reopened for further consideration. The rules of the court require that motions for a new trial be filed during the term when judgment was rendered—a salutary provision in order that there may be an end of litigation. I know of no reason why an exception to the general rule should be made in this instance and the claimant allowed to reopen his case after more than ten years of silence.

Respectfully,

GEO. W. WICKERSHAM, *Attorney-General.*

HON. GEORGE W. PRINCE,  
*Chairman Committee on Claims,*  
*House of Representatives.*

